IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1513 OF 2004

M/s.D.K. Builders and Developers. ...Petitioner
V/s.
Shri Anil Dattatraya Taware & Anr. ...Respondents

Shri A. Tanjane i/b. P.B. Shaligram for Petitioner.
Shri K.S. Patil, Advocate for Ms.P.H. Kantharia, APP for State.

CORAM : V.M. KANADE, J.

DATED : AUGUST 2, 2006

P.C. :-

. Hearing learned Counsel for the petitioner and learned Counsel for the respondents.

2. The petitioner is challenging the order passed by the J.M.F.C. whereby the Magistrate has directed the charge should be framed against the present petitioner under Sections 3(f) and 8 of the Maharashtra Owner-ship Flats Act (In short "MOFA"). Against the said order, the petitioner had preferred revision application before the Sessions Court. The said revision application also has been dismissed.

3. Learned Counsel for the petitioner invited my

attention to the evidence which has been recorded by the Magistrate before the framing of the charge. It was submitted that the complainant was residing in the alternative accommodation which was given to him by the petitioner. It was submitted that the learned Magistrate has acquitted him of the offence punishable under Sections 406 and 420 of the IPC. It is submitted that the complaint which was filed initially for breach of trust and for cheating and the said charges having been dropped by the Magistrate, no case was made out under the MOFA. He invited my attention to the finding recorded by the Magistrate as also by the Sessions Court and submitted that the lower Court had failed to take into consideration that the ingredients of Section 3(f) and Section 8 read with Section 13 of the MOFA was not attracted to the facts of the present case.

4 It is not possible to accept the submission made by the learned Counsel for the petitioner when the concurrent finding recorded by both the Courts below in which both the Courts have come to the conclusion that prima facie case has been made out by the complainant

for the offence punishable under Section 3(f) and under Section 8 read with 13 of the MOFA.

5. It is not possible at this stage to consider the Agreement and the clauses in the Agreement for the purpose of deciding whether prima facie case is made out or not since this finding has already been recorded by both the Courts below. I do not see any reason to interfere with the order.

. Writ petition therefore, is dismissed.

(V.M. Kanade, J.)